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# TESTIMONY: HOUSE GOVERNMENT OPERATIONS COMMITTEEE

July 24, 2007

Re: HB 4854

Honorable Chair Wojno and Members of the House Government Operations Committee:

My name is Scott Wisor, senior national field organizer for the Sudan Divestment Task Force, a project of the Genocide Intervention Network. Our organization is actively involved in dozens of successful and developing targeted Sudan divestment campaigns around the world at the university, asset manager, city, state, and national levels. We have had the honor to help develop model Sudan divestment legislation which focuses its efforts on the most problematic companies in Sudan. This approach, termed "targeted divestment", helps to maximize impact on the Sudanese government, while minimizing potential harm to both innocent Sudanese and investment returns.

Thank you for the opportunity to testify in support of HB 4854. I will spend my time answering a few questions you may have regarding the legislation: first, is targeted divestment effective; second, does HB 4854 protect the state's fiduciary obligations; third, will this legislation lead the state down a slippery slope of divestment; and finally, is this legislation constitutional?

#### Is targeted divestment effective?

The Sudanese government has a long history of susceptibility to economic pressure, with a foreign debt nearly as large as its GDP. More than US diplomacy, the country has responded to US economic pressure in the past. Despite this historical responsiveness, the regime has faced little in the way of economic consequences for its perpetuation of genocide in Darfur, heavily protected by a small set of international protectors whose commercial interests in Sudan are very strong. Indeed, while the regime has been brutal towards its own citizens, it has been a shrewd attracter of foreign investment- it

currently ranks in the top 20 countries in the world in attracting foreign investment dollars as a percentage of its GDP and it holds international investor conferences, even as the genocide is ongoing, with amazing regularity. This is a government acutely attuned to the country's finances but facing little challenge from the international community. As if to emphasize this point, Sudan's President, Omar Al-Bashir, recently stated to the international press, "When countries gave us sanctions, God gave us oil."

Ironically, the number of companies propping up this genocidal regime is relatively limited. While there are over 500 multinationals operating in Sudan, only a few dozen play a truly detrimental role in the country. House Bill 4854 surgically targets those few dozen companies. Moreover, the companies the state pension systems choose as replacements may very well perform better than the offending companies, since an additional 18 US states have already adopted similar divestment policies from those very companies and over a dozen others are considering taking similar action.

The emerging Sudan divestment movement has already caught the attention of the Sudanese government, which has spent considerable time and energy attacking the campaign, even going so far as to purchase a six page ad for more than \$1 million in the New York Times to counteract the divestment movement. Several major companies operating in Sudan, including Schlumberger and Total, have also recently altered their business practices, largely in response to the divestment movement. ABB, Rolls Royce, and Siemens recently decided to suspend all non-humanitarian operations in the country.

Prominent foreign policy experts and think tanks which do not classically support blanket sanctions, including experts from the International Crisis Group, the Council on Foreign Relations, Harvard University, and the Heritage Foundation, have all endorsed targeted sanctions, including divestment, on the Sudanese regime, calling it a critical tool for influencing the behavior of the Sudanese government and bringing long-term peace and security to the region.

House Bill 4854 would require the state to engage and possibly divest from a very small subset of companies currently operating in Sudan. The majority of these companies are not in the state's portfolios and the companies, in aggregate, fail to compromise a significant portion of any major

international index. The "worst-offending" companies are businesses involved in facilitating arms trades to Sudan, forcing local populations off of oil land, importing labor rather than employing Sudanese, and facilitating Sudan's genocide by granting permission for military aircraft to launch from company facilities, refueling of military aircraft, and other clearly problematic actions. Furthermore, because of longstanding US sanctions on Sudan, House Bill 4854 does not target any companies incorporated in the US.

### Does HB 4854 protect the state's fiduciary obligations?

While Michigan might be interested in doing what it can to prevent human kind's worst crime, the state has an important obligation to manage retirement assets in a financially prudent manner. Recognizing this obligation, House Bill 4854 was designed in close consultation with fiduciaries, asset managers, and legal counsel allowing the state to dissociate the state from genocide while safeguarding the state pension systems' portfolios.

The bill limits financial risk in five key ways (thereby setting it far apart from Sudan divestment legislation passed in states like Illinois or New Jersey):

First, all company research, template letters, and other pertinent information needed to carry out this bill's research and engagement provisions are available free of charge from reputable non-profits, thereby minimizing administrative burdens on the state retirement systems.

Second, the bill limits the number of companies targeted to those warranting "scrutiny," representing only a very small fraction of total holdings.

Third, the bill precludes divestment from certain types of investments, including private equity and actively managed, commingled funds, that have caused the most problems with divesting fiduciaries.

Fourth, the bill allows the state pensions to attempt to change company behavior through an expedited engagement process prior to the enactment of any divestment.

Fifth, the bill gives the affected retirement systems at least 15 months to engage the "scrutinized companies" and complete divestiture of companies unresponsive to engagement.

## Will this legislation lead the state down a slippery slope?

Divestment is an option that should be considered only in the most extreme of circumstances. Heeding every call for divestment is impractical and imprudent. However, the overwhelmingly heinous nature of genocide, combined with validation of the genocide by official, non-biased, and highly trustworthy sources, makes the call for Sudan divestment truly singular among recent divestment campaigns.

It should also be noted that this is the first time in history that a genocide has been declared while atrocities are still ongoing. This clearly makes a Sudan divestment decision unique and allows fiduciaries to maintain an extraordinarily high benchmark for considering divestment in the future.

#### Is the legislation constitutional?

In order to protect HB 4854 from the litigation faced in Illinois and in past litigation dealing with this issue, the bill was written in close consultation with a team from Cooley Godward and Kronish, one of the nation's top law firms. That team was headed up by a former clerk for two US Supreme Court Justices. HB 4854 was also written after numerous discussions with the litigants in the Illinois case, in an attempt to address their primary concerns. Furthermore, the model before you today has received support from other state pension funds that have traditionally opposed mandated divestment.

It is critical to note that HB 4854 is different in every conceivable way from the Illinois legislation. The Illinois legislation targets over 160 companies (including some of the largest companies in the US), it requires divestment to begin immediately without any engagement of problematic companies in dialogue, it targets all investment vehicles, and it contains no sunset provision, all factors not present in HB 4854.

Furthermore, our legal counsel has reviewed the recent decision in the Illinois case and notes that judge left significant room in his opinion for the constitutionality of HB 4854. Rather than

categorically rejecting divestment, the judge created a set of boundaries past which divestment can not go. Given that the targeted model of HB 4854 was developed by legal counsel experienced with exactly the constitutional issues the Judge addressed in the Illinois case, we are confident that HB 4854 has not crossed these boundaries and will withstand constitutional muster.

In conclusion, I would like to thank the sponsoring representatives and senators, as well as their staffs, for carrying this important piece of legislation.

By passing HB 4854 you will demonstrate that Michigan will not allow its pension funds to facilitate genocide, while simultaneously putting much-needed economic pressure on the government of Sudan-pressure that has already caught the attention of Sudan's government and changed company behavior in the country. Thank you for your time today, and I would be honored to help answer any additional questions that you may have.